

State of Alaska FY2007 Governor's Operating Budget

Department of Law Torts & Workers' Compensation Component Budget Summary

Component: Torts & Workers' Compensation

Contribution to Department's Mission

The Torts and Workers' Compensation section provides legal defense and advice in personal injury lawsuits filed against state agencies and state employees. It also provides advice and training to state agencies and represents the state as employer before the Workers Compensation Board.

Core Services

Attorneys in the Torts and Workers' Compensation section defend tort claims, maritime personal injury claims, and civil rights claims for damages under 42 USC §1983 filed in both state and federal court, and appear in both the trial courts and appellate courts of the state and federal court system. Examples of the types of lawsuits defended by the section include: wrongful death claims, claims of injury occurring on state or state maintained facilities, medical malpractice claims brought by inmates, maritime personal injury claims against the Alaska Marine Highway system, claims of negligence in the handling of children's abuse or neglect cases, cases against the state for actions of third parties in state custody (e.g. probationers, foster children, inmates), and other claims of injury alleged against state officials (e.g. Alaska State Troopers, drivers of state vehicles, etc.). Attorneys in the section represent state agencies in Workers Compensation claims filed by state employees where the state is the employer. They advocate on behalf of the state at hearings before the Workers' Compensation Board, and represent the state in appeals from the Board taken to the superior and Alaska Supreme Court.

Attorneys in the Torts and Workers' Compensation section provide oral advice and training to state agencies on risk management, workers' compensation, and liability issues and provide oral advice to state adjusters on workers' compensation and liability issues.

FY2007 Resources Allocated to Achieve Results

FY2007 Component Budget: \$3,025,300	Personnel:	
	Full time	27
	Part time	1
	Total	28

Key Component Challenges

As the cost of Worker Compensation payments and medical costs continue to accelerate for the state, the Torts and Workers Compensation Section faces the challenge of litigating these claims and costs to a fair resolution. As the availability of state infrastructure resources decrease, it is anticipated that tort claims arising out of the delivery of state services may increase. Both of these challenges may increase the caseload of the section. The section will be faced with addressing increased caseload with its existing staffing levels as well as turnover in attorney staff within the section.

Significant Changes in Results to be Delivered in FY2007

Effective June 2004, AS 09.50.253 affords a certification process for common law claims against individually sued state employees for lawsuits brought pursuant to AS 09.50.250. The certification process allows an individually sued state employee to be dismissed from a lawsuit (and the state substituted as defendant) if the Attorney General certifies that the employee was acting within the scope of the employee's office or employment at the time of the incident out of

which the claim arose. The certification process will play a larger role in the section's tort defense in FY2007 because of the June, 2004, effective date and the two year statute of limitations for tort claims.

In tort litigation, the section will continue to increase its use of early Offers of Judgment and Motions for Summary Judgment to achieve fair resolution of cases. In appropriate tort cases, the section will utilize Alternate Dispute Resolution in the early stages of the claim or litigation to resolve cases. In its defense of state workers compensation claims, the section will lodge appropriate challenges to rulings of the Board in order to achieve consistency and predictability. The section's caseload is increasing as a result of litigation of issues arising out of AS 09.17.020(j) (allocation of punitive damage awards to the state) and collection of punitive damage awards.

Major Component Accomplishments in 2005

Appellate Work of the Section of Particular Note:

The section prevailed in an Alaska Supreme Court decision finding that OPA, appointed as conservator, was under no actionable duty to petition to the court to change the conservatorship to a guardianship. *Trapp v. Office of Public Advocacy*

The Alaska Supreme Court denied the section's appeal challenging the award of enhanced attorneys' fees for work performed at the Board level by claimant's counsel based in part on the contingent nature of the attorney's compensation. The Court reaffirmed that the Board may consider the contingent nature of a claimant's attorney's compensation when making fee awards. *State v. Cowgill*

In addition, the section has several appellate matters of note currently on appeal with the Alaska Supreme Court which involved significant briefing during FY2005:

The section briefed and argued to the Alaska Supreme Court issues relating to the state's immunities in A.S. 09.50.250(3)(excluded common law tort claims such as assault and battery) and the construction of that statute. *B.R. v. State (DOC)*.

In two different appeals, the section briefed the grant of summary judgment by the trial court in claims arising out of a criminal prosecution. In one case the public defender was sued; in the other the prosecutor. *Pomeroy v. Brink (Alaska Supreme Court)*; *Pomeroy v. Wallace* (9th Circuit)

An interlocutory appeal was taken on the denial of immunity by U.S. District Court in a case brought against several Alaska State Troopers alleging excessive force. *Winterrowd v. Nelson, et al.*

The section briefed the issue of whether the state procurement code offers the exclusive remedy for claims arising out of state procurements to the Alaska Supreme Court. The trial grant granted the state's motion for summary judgment. *J & S v. State, Tomter*.

Jury trials Defended by the Section of Particular Note:

Two jury trials were defended by the section (both trials were held in Bethel). One case involved allegations of excessive force by a state trooper. In this case the trial court found the statutory cap on non-economic damages to be unconstitutional. The other case involved allegations of negligence against the Department of Transportation (DOT) at an unattended village airport. Both cases resulted in verdicts against the state. The state trooper case was remanded to the trial court from the Supreme Court for further post-trial briefing before it is returned to the Supreme Court. The DOT case has been appealed by the section and is at the briefing stage before the Alaska Supreme Court.

As always, many cases were prepared for defense at jury trial. Those that were not dismissed through summary judgment were resolved shortly before trial as reflected in the Supplemental Bill for 2005.

The section participated in several hearings before the Alaska Workers Compensation Board; the section prevailed in several of these hearings. Of special note, the Board accepted the state's argument that a claimant was not entitled to a second independent medical evaluation. In another, the Board granted the state's petition dismissing the claimant's claims with prejudice as a discovery sanction.

Dispositive Motions of Particular Note Won by the Section in the Trial Court:

Multiple lawsuits filed by *pro se* litigants against the Alaska State Troopers alleging common law tort claims and civil rights violations were dismissed on summary judgment. In another suit against a state trooper, the trial court granted summary judgment dismissing a claim for conversion of property seized pursuant to a search warrant and subsequently returned to the putative owner.

Several lawsuits filed by inmates alleging medical malpractice were summarily dismissed by the trial court based on the inmate's failure to demonstrate a failure of care.

In two suits filed by Allstate Insurance Company requesting declaratory relief against the state, the trial court rejected Allstate's claims that the state is an insurer for foster parents and that state "coverage" is primary over Allstate's homeowner policies sold to the foster parents.

The section prevailed in its claim for contractual indemnity claim made against a DOT construction contractor who denied the state's tender of defense. The state was able to collect the monies paid in settlement of the underlying tort claim from the contractor after protracted litigation.

Other matters handled by the Section

During the legislative session, attorneys in the section provided extensive time and effort on revisions to the workers' compensation statutes resulting in the passage and signing of SB 130 which represented the first broad re-working of the Alaska Workers' Compensation Act since 1988.

The section successfully defended a multiparty lawsuit that arose out of a motor vehicle accident involving a Department of Corrections prisoner van in which five persons were killed and three were injured. Claims totaled nearly \$15 million and mediation resulted in a global settlement funded entirely by other parties.

Attorneys in the section successfully obtained a number of third party reimbursements on state workers' compensation liens. Attorneys in the section were also involved in the recovery of the state's allocation of punitive damage awards including defending challenges to AS 09.17.020(j).

Statutory and Regulatory Authority

No statutes and regulations.

Contact Information

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Torts & Workers' Compensation Component Financial Summary

All dollars shown in thousands

	FY2005 Actuals	FY2006 Management Plan	FY2007 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	2,108.8	2,469.1	2,610.9
72000 Travel	39.6	28.5	28.5
73000 Services	252.6	346.9	347.0
74000 Commodities	43.7	38.9	38.9
75000 Capital Outlay	28.5	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	2,473.2	2,883.4	3,025.3
Funding Sources:			
1004 General Fund Receipts	0.8	47.1	47.1
1007 Inter-Agency Receipts	2,472.4	2,836.3	2,978.2
Funding Totals	2,473.2	2,883.4	3,025.3

Estimated Revenue Collections

Description	Master Revenue Account	FY2005 Actuals	FY2006 Management Plan	FY2007 Governor
<u>Unrestricted Revenues</u>				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
<u>Restricted Revenues</u>				
Interagency Receipts	51015	2,472.4	2,836.3	2,978.2
Restricted Total		2,472.4	2,836.3	2,978.2
Total Estimated Revenues		2,472.4	2,836.3	2,978.2

**Summary of Component Budget Changes
From FY2006 Management Plan to FY2007 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2006 Management Plan	47.1	0.0	2,836.3	2,883.4
Adjustments which will continue current level of service:				
-FY 07 Wage Increases for Bargaining Units and Non-Covered Employees	0.0	0.0	45.4	45.4
-FY 07 Health Insurance Cost Increases for Bargaining Units and Non-Covered Employees	0.0	0.0	4.6	4.6
-FY 07 Retirement Systems Cost Increase	0.0	0.0	87.4	87.4
Proposed budget increases:				
-Risk Management Self-Insurance Funding Increase	0.0	0.0	4.5	4.5
FY2007 Governor	47.1	0.0	2,978.2	3,025.3

Torts & Workers' Compensation Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY2006</u> <u>Management</u> <u>Plan</u>	<u>FY2007</u> <u>Governor</u>		
Full-time	27	27	Annual Salaries	1,823,032
Part-time	1	1	COLA	48,383
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	904,462
			Less 5.94% Vacancy Factor	(164,977)
			Lump Sum Premium Pay	0
Totals	28	28	Total Personal Services	2,610,900

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney II	1	0	0	0	1
Attorney IV	9	0	1	0	10
Attorney V	1	1	1	0	3
Attorney VI	1	0	0	0	1
Law Office Assistant I	4	1	0	0	5
Law Office Assistant II	1	1	1	0	3
Paralegal II	3	1	1	0	5
Totals	20	4	4	0	28